IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3811 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE JEEVANPRAKASH VIKAS MANDAL - Petitioner
Versus
GOVERNMENT OF GUJARAT & 3 - Respondents

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Appearance :
MR JD AJMERA for Petitioner : 1,
MR SP HASURKAR AGP for Respondent : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 07/04/2006

ORAL JUDGMENT

1.The petitioner School has challenged the orders dated 13.1.1994 and 3.2.1994, whereunder, the District Education Officer has issued direction to absorb one

Smt. S.U. Bodkar, a surplus Junior Clerk from Shri Ladharam Sindh Hindu High School to the petitioner School.

2. The affidavit-in-reply is filed, which was affirmed on 23.2.2006, wherein, the respondents have urged that the grounds put up by the school were not tenable and due to recalcitrant attitude on the part of the petitioner, the impugned orders were required to be passed. These orders are absolutely just and proper. It has also been urged on behalf of the respondents that the petitioner has approached this Court straightway without approaching the Commissioner of School and Mid Day Meals, which is superior authority to the District Education Officer and thus, without availing the alternative remedy available to the petitioner, the petitioner has approached this court and therefore also, the petition is also not maintainable.

3. Mr. Ajmera, learned advocate for the petitioner has submitted that he has no instructions but the fact remained that the orders impugned, has remained stayed since 18th March, 1994.In view of this, the fact remains that the respondent authorities while issuing impugned orders, which has resulted into civil consequences namely deduction in grant, has been passed without affording opportunity of hearing to the petitioner. The

grounds taken by the petitioner in its representation to the Government cannot be said to be untenable in eye of law. On the absence of a specific termination order of the Clerk, at whose place, the surplus clerk, who sought to be adjusted, the impugned orders could not have been passed. Had there been an opportunity of being heard given to the petitioner, the authority would have been satisfied about the grounds. In this view of the matter,the petition deserves to be disposed off only on the ground of non-compliance with the principles of natural justice.

4. Shri Hasurkar, learned AGP for the respondent, could not show from the Rules any specific exclusion of principles of natural justice nor could he show me any statutory provision providing for appeal against such impugned orders.

5. In view of these, the impugned order at page No. 22 at Annexure-E alone deserves to be quashed and set aside. However, it has been clarified that the order dated 13.1.1994 is not quashed as the same could be decided by the respondents. The directions impugned, which has a civil consequence, ought to have been made after hearing the petitioner. In view of this, on the limited ground, the impugned order dated 3.2.1994 is hereby quashed and set aside. However, the respondents are

given liberty to make appropriate orders after affording the principles of natural justice and issuing due notice to the petitioner. The petition, thus, stands partly allowed. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

(S.R.BRAHMBHATT, J.)

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